

In the High Court of Punjab and Haryana at Chandigarh

.....

C.W.P. No. 6534 of 2005
Date of decision: 19-09-2007

.....

Smt. Seema Chaudhary

.....Petitioner

Versus

The State of Haryana and others

....Respondents

Coram: **Hon'ble Mr. Justice K.S.Garewal**

Present: Mr. Ashok Aggarwal, Senior Advocate, assisted by
Mr. Alok Jain, Advocate, and
Mr. Girish Agnihotri, Sr. Advocate with
Mr. Rajesh Sharma and Ms. Binayjit Sheoran, Advocates
for the petitioner.

Mr. Anil Rathee, Additional Advocate General, Haryana

Mr. Rajbir Sehrawat, Advocate,
for respondent No.4

Mr. M.L.Saggar, Senior Advocate, assisted by
Mr. G.P.Vashisht, Advocate,
for respondent No.7

.....

K.S.GAREWAL, J.

Seema Chaudhary was elected President of Municipal Council, Panchkula in January 2003 for a term of five years. The Municipal Council has 31 elected and 2 nominated members, the nominated member being the local M.L.A. and the M.P. This takes the total number of members to 33.

The sole question to be determined in this petition is whether the petitioner was democratically removed from Presidentship when the no confidence motion against her was carried on April 12, 2005?

The Haryana Municipal Act, 1973 lays down that a motion of

no confidence against the President may be made in accordance with Section 21 at a meeting convened in accordance with Rule 72-A of the Haryana Municipal Rules. Deputy Commissioner is required to convene a meeting for consideration of the motion in the manner laid down in the Rules. If the motion is carried with the support of not less than 2/3rd of the elected members of the Committee, the President shall be deemed to have vacated his office. In the meeting convened on April 12, 2005 by the Sub Divisional Officer (Civil), Panchkula 26 members of the Municipal Council took part. 25 members cast their vote (23 in favour of the motion and 2 against). The motion was thus passed.

Seema Chaudhary's contention is that the motion of no confidence against her was submitted to Deputy Commissioner, Panchkula on March 15, 2005. The Deputy Commissioner authorized the S.D.O. (Civil) to convene the meeting of the members. Consequently on March 16, a notice was issued to all members for the meeting to be held on April 1, 2005 but no meeting was held on that day. S.D.O. (Civil) convened another meeting for the same purpose to be held on April 12, 2005. According to the learned counsel for the petitioner the second meeting could not be convened before the expiry of a period of six months from the previously convened meeting. It has also been submitted that Seema Chaudhary had earlier filed C.W.P. 5010 of 2005 on March 28, 2005 demanding that the voting on the no confidence motion, scheduled for April 1, should be by secret ballot. The Bench issued notice of motion for March 31, the Sub Divisional Officer (Civil) appeared through counsel and filed his reply. On April 1, at 10.00 a.m. S.D.O.(Civil) was present in person and stated that voting for the no confidence motion shall be conducted by secret ballot. The petition was

dismissed as withdrawn.

Learned counsel's contention is that the secrecy of the ballot was not strictly observed but was seriously breached. Moreover, the convening of the meeting on April 12 was challenged on the ground that meeting had been convened on April 1, therefore, a second meeting could not be convened before six months. In this regard the specific stand taken by the respondents was that the convened meeting for April 1, 2005 could not be held because on that day State mourning had been declared by the Government due to the sudden death of two Haryana Ministers, Chaudhary Surinder Singh and Shri O.P.Jindal.

To what extent was the secrecy of the ballot maintained is an important question to be considered in the present case. The reply of the respondents is that ballot papers had been thoroughly shuffled before they were issued to the eligible voters present. Each ballot paper had been machine-numbered and its counterfoil was signed by the person to whom it had been issued. When this petition came up before the Division Bench during the motion hearing on August 28, 2006 the Bench had asked for production of the entire record. The record was produced on August 30, 2006 and the Bench recorded its observations on the state of the record. It consisted of an envelope sealed with a tape. This envelope contained the record of the proceedings. When it was opened it was found to contain a medium size envelope which in turn contained three small envelopes. All the four envelopes were found to be torn. Envelope No.1 contained 25 used ballots (23-Yes and 2-No.) alongwith 25 counterfoils of each of ballot. These ballots have been examined by me and show that each counterfoil bears the signatures of the member. Each ballot paper is also machine-

numbered. Therefore, it is easy to know who had voted for the motion and who had voted against the motion.

The version of S.D.O.(Civil) respondent no.3 in his own words is that “33 ballots papers were prepared having their serial numbers mention on the counterfoil as well as on ballot paper duly signed by me on back just to make the sanctity of the Ballot Paper. Before issuing these Ballot Papers for voting to the members we reshuffled the ballot paper and issued them one by one after getting their signatures on the counterfoils. Each member after having Ballot marked it in voting compartment and put it in the Ballot Box. While the proceeding was in full swing Smt. Seema Chaudhary President, M.C. Panchkula raised an objection that ballot papers should not have any number on their back and not signed by you as it can cause damage to the secrecy of votes. Then I told her that without number and signature of Presiding Officer it is no Ballot Papers in the eyes of law and we adopted the same procedure as being adopted in Lok Sabha and Legislative Assembly. Then she asked to a M.C. namely Sh. R.S.Bidhan, Advocate then he replied the same. While the proceeding was on Seema Chaudhary President raised another objection that Smt. Jagdamba Gupta, M.C. Who was ill and came to my office for casting of her vote on wheel chair along with a companion, she may not be allowed to accompany her companion upto voting compartment which was turn down because as per law a person who is ill and sitting on wheel chair can be allowed with the companion upto voting compartment.

When all the 25 members including one nominated member Sh. Chander Mohan M.L.A. Kalka and Kuldeep Waraich Vice President then I made a request to Smt. Seema Chaudhary President M.C. to cast her vote

but on my repeating request she denied it. After voting was complete I asked to give me the Ballot Box which was kept in front of all members. I asked to give me the ballot box which was kept in front of all members. I asked them to check the seal whether it is intact or not. All the members found it intact then I open(break) the seal and opened the Ballot Box and started counting of vote polled. While counting I found 25 votes were polled out of which 23 were in favour of no confidence and 2 votes were against the motion. I announced the result that No confidence motion against Smt. Seema Chaudhary President and Smt. Kuljeet Waraich was passed and signed on the Proceeding as for the motion to pass it requires $\frac{2}{3}^{\text{rd}}$ of votes of the total House i.e. (31+2) meaning there by motion can be passed for 22 votes also but here it was 23. We sealed the used Ballot Paper (total No 25) in one envelope namely No.1. We sealed the unused Ballot Paper (total No8) in one envelope namely No.2. We sealed the counterfoil of used Ballot Paper in one envelope No.1 again. In the last I sealed envelope No.1, envelope No.2 in one another big envelope with these proceedings. It is pertinent to mention here that all members who were present at the start of meeting remained present during the entire proceedings upto end upto the pronouncement of the motion passed.” (verbatim extract of hand written proceedings recorded by SDM Panchkula on 12.4.2005).

All the three envelopes had been sealed but unfortunately when the main sealed envelope was opened in court, the three envelopes which emerged from inside were open. The explanation of the Deputy Commissioner is that he had opened them to verify the contents. The explanation is contained in an affidavit dated September 9, 2006 of Rajinder

Singh, IAS, Deputy Commissioner, Panchkula, which was filed on the basis of the direction of the Bench on August 30, 2006. The Deputy Commissioner had specifically stated that he was under an obligation to open the envelope and examine the record in exercise of the powers conferred under Sections 21(4) and 246 of Haryana Municipal Act, 1973. The explanation cannot be accepted as the procedure undertaken by S.D.O. (Civil) was apparently on the basis of his promise to this Court on April 1, 2005 that the secrecy of the ballot shall be maintained.

It is quite obvious from the presence of Shri Chander Mohan, (M.L.A. Panchkula and Deputy Chief Minister, Haryana) in the office of the S.D.O.(Civil) on April 12, 2005, that some kind of pressure and influence was being exercised on the members of the Municipal Council at the time no confidence motion was put to vote.

Shri Chander Mohan was a nominated member of the Council, nominated in his capacity as a member of the Legislative Assembly. Nominated members had the right to attend all meetings and take part in discussion. S.D.O.(Civil) allowed Shri Chander Mohan to cast his vote. This is clear from the copy of the proceeding Annexure P-9. The concluding paragraph is as follows:-

“ In the meeting total of 26 members took part and Smt. Seema Chaudhary did not cast her vote and refused to do so. Remaining 25 members cast their ballot. Out of 25 ballots, 23 votes were cast in favour of the motion and 2 votes were cast against the no-confidence motion. The process of polling was conducted through secret ballot. Therefore, the motion of no-confidence was passed.”

Proceedings Annexure P-9 are markedly different from the proceedings recorded and sealed after the motion was carried out. The proceedings which were opened in court also show ballots were issued to 26 members including to the sole nominated member. 25 votes were cast, the petitioner was the sole member who did not vote and the motion was carried with 23 in favour and 2 against. The impression which is carried is that the overwhelming presence of the Deputy Chief Minister at the time of the meeting and the secrecy of the ballot not been strictly observed, had an impact on the process which was contrary to democratic norms. Still the undue influence of the Deputy Chief Minister who was present and voted has cast a big doubt on the whole procedure and the undertaking given by S.D.O.(Civil) in C.W.P. No. 5010 of 2005 on April 1, 2005 stood violated.

It was argued by the learned counsel for the petitioner that the meeting convened for consideration of motion of no confidence against the petitioner was to be held on April 1, 2005. Since the meeting was held on April 1, 2005, no such meeting for the purpose could be convened against motion, unless a period of six months had lapsed since the date of the last meeting convened for this purpose. Therefore, the meeting convened on April 12, 2005 was not a validly convened meeting. Reference was made to Chandu Ram and others Vs. The State of Punjab 1985 P.L.J. 492. In this case the meeting of the Committee had been called for August 26, 1981, and Shri Chandu Ram (petitioner) was declared elected. The resolution was passed to that effect but the Sub Divisional Officer suspended the resolution on the following day by observing that the Government had adjourned the August 26 meeting. The Executive Officer who was holding the meeting had informed the acting President and the members present about the orders

of the Government but they ignored the orders and passed the resolution. This court held that once the process of election has been set into motion it should be allowed to complete its course and the State Government had no power to adjourn the meeting called for the election of the President.

Reference was also made to Babu Lal Aggarwal, President Municipal Committee, Narnaul Vs. The Commissioner and Secretary to Government of Haryana 1994 P.L.J. 54 which specifically related to meeting called for consideration of a no confidence motion. It was held that the meeting cannot be adjourned for lack of quorum. If the quorum was complete the inference was that the motion stood rejected.

Thirdly, reference was made to Ram Singh Vs. State of Punjab and others 1998(1) PLJ 246. In this case a meeting was called for consideration of no confidence motion on April 19, 1997 but the Deputy Commissioner sent a wireless message for the meeting to be postponed. Irrespective of that the Council met and the motion was passed. The court held that the Deputy Commissioner had no power to prohibit the doing of any act or take away right of the members to meet and decide. The resolution was held to be valid and the Deputy Commissioner had no jurisdiction to postpone the meeting.

It may be noted that Seema Chaudhary had participated in the meeting held on April 12, 2005, therefore, she is estopped from raising any objection regarding the validity of this meeting. Moreover, the meeting could not be convened on April 10, 2005 as two ministers of the Haryana Cabinet had died and a State mourning had been declared. Consequently, the meeting was convened on April 12, 2005. This meeting cannot be termed to be illegally convened. The cases cited by the learned counsel for

the petitioner are distinguishable.

However, the most disconcerting feature in this case still remains the breach of secrecy which S.D.O.(Civil) had undertaken to observe. The petitioner had serious apprehensions regarding breach of secrecy and the resultant influence which may be exerted in favour of the no confidence motion against her because the Deputy Chief Minister of Haryana was also a member, by virtue of being sitting M.L.A. from Panchkula.

It is a well known that in public life public men rarely stand by their mandate and often skip sides to align themselves with the ruling party. The petitioner had feared that if secrecy was not maintained, the motion may be carried. The Deputy Chief Minister was present at the time the motion was to be voted. He did cast his vote which shows that he actively participated in the process. The sealed envelopes which were produced before this Court on August 30, 2006, containing the record of the proceedings, had been opened at some stage but on whose behalf it is difficult to say. The Deputy Commissioner admitted that he opened the envelopes and claimed that he had done this to verify the contents. This is a strange explanation. Something which has been sealed is supposed to remain sealed until opened. The Deputy Commissioner should have noted on the envelopes that he opened them, examined their contents and resealed them but he did not do so. This may not have been an important factor unless one considers that the counterfoils of the ballots had their respective signatures and each counterfoil was numbered. Similarly, each ballot paper also showed the same number. By examining individual ballot papers it was possible to know who had voted for the motion and who against. The

secrecy of the ballot was breached by the Deputy Commissioner. The Deputy Chief Minister was interested not only in the outcome of the no confidence motion but also in knowing which of the members had gone against his wishes. Big brother was watching over everyone, the members and also the Presiding Officer.

Such is the reality of our democracy. The procedure is fair and just, the practice of it becomes unfair, unjust and questionable.

In view of the above discussion I hold that though the meeting on April 12, 2005 was validly convened and the various judgments cited by the learned counsel for the petitioner do not really apply in this case, the participation of the Deputy Chief Minister and the breach of the secrecy of the ballot have cast serious doubts on the manner in which no confidence motion was passed.

Therefore, this petition is allowed. A writ of certiorari is issued quashing the proceedings dated April 12, 2005 conducted by S.D.O. (Civil), Panchkula (Annexure P-9), report dated April 12, 2005 issued by Sub Divisional Officer, Panchkula (Annexure P-10). Consequently letter dated April 20, 2005 (Annexure P-11) issued by Deputy Commissioner, Panchkula declaring that the motion of no confidence had been passed, is also void and quashed.

Petitioner shall be reinstated as President, Municipal Council, Panchkula, immediately. Petitioner shall be entitled to Rs.10,000/- as costs.

(K.S.GAREWAL)
JUDGE

September 19,2007
RSK

NOTE: Whether to be referred to the Reporter or not: Yes/No